

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
TOLEDO DIVISION**

LEONARD M. WETZEL,

Plaintiff,

v.

HARRIS & HARRIS, LTD.,

Defendant.

CIVIL COMPLAINT

CASE NO. 3:20-cv-00861

DEMAND FOR JURY TRIAL

COMPLAINT

NOW comes LEONARD M. WETZEL (“Plaintiff”), by and through his attorneys, Sulaiman Law Group, Ltd. (“Sulaiman”), complaining as to the conduct of HARRIS & HARRIS, LTD. (“Defendant”), as follows:

NATURE OF THE ACTION

1. Plaintiff brings this action for damages pursuant to the Fair Debt Collection Practices Act (“FDCPA”) under 15 U.S.C. §1692 *et seq.*, and the Telephone Consumer Protection Act (“TCPA”) under 47 U.S.C. §227 *et seq.*, for Defendant’s unlawful conduct.

JURISDICTION AND VENUE

2. This action arises under and is brought pursuant to the FDCPA and TCPA. Subject matter jurisdiction is conferred upon this Court by 15 U.S.C §1692, 47 U.S.C. §227, 28 U.S.C. §§1331 and 1337, as the action arises under the laws of the United States.

3. Venue is proper in this Court pursuant to 28 U.S.C. §1391 as Defendant conducts business in the Northern District of Ohio a subtotal portion of the events that gave rise to this action occurred within the Northern District of Ohio.

PARTIES

4. Plaintiff is a consumer over 18 years-of-age residing in the Northern District of Ohio.
5. Plaintiff is a “person” as defined by 47 U.S.C. §153(39).
6. Defendant is a third party debt collector operating out of Chicago, Illinois. Defendant is a limited company incorporated under the laws of the state of Illinois with its principal place of business located at 111 West Jackson Boulevard, Suite 400, Chicago, Illinois. Defendant regularly collects upon consumers located within the state of Ohio.
7. Defendant is a “person” as defined by 47 U.S.C. §153(39).
8. Defendant acted through its agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, third-party contractors, representatives and insurers at all times relevant to the instant action.

FACTS SUPPORTING CAUSES OF ACTION

9. The instant action arises out of Defendant’s attempts to collect upon a medical debt (“subject debt”) that Plaintiff allegedly owed to ProMedica.
10. Around September 2019, Plaintiff began receiving calls to his cellular phone, (419) XXX-1143, from Defendant.
11. At all times relevant to the instant action, Plaintiff was the sole subscriber, owner, and operator of the cellular phone ending in -1143. Plaintiff is and always has been financially responsible for the cellular phone and its services.
12. Defendant has called Plaintiff mainly using the phone number, (312) 574-1806, however, upon information and belief, Defendant has employed other phone numbers as well.
13. Upon information and belief, the aforementioned phone number ending in -1806 is regularly utilized by Defendant during its debt collection activity.

14. Upon answering phone calls from Defendant, Plaintiff has experienced a significant pause, lasting several seconds in length, before being connected with a live representative.

15. Plaintiff, through his contacts with Defendant, was informed that Defendant was acting as a debt collector attempting to collect upon the subject debt.

16. Upon speaking with Defendant, Plaintiff requested that Defendant cease contacting him. Plaintiff further explained to Defendant that he works during the nighttime and that Defendant's daytime calls are inconvenient to him.

17. Defendant willfully ignored Plaintiff's demand and continued placing phone calls to Plaintiff's cellular phone.

18. Despite Plaintiff's request, Defendant has continued to regularly call Plaintiff's cellular phone up until the filing of this lawsuit.

19. Plaintiff has received no less than 30 phone calls from Defendant since asking it to stop calling.

20. Frustrated over Defendant's conduct, Plaintiff spoke with Sulaiman regarding his rights, resulting in exhausting time and resources.

21. Plaintiff has been unfairly and unnecessarily harassed by Defendant's actions.

22. Plaintiff has suffered concrete harm as a result of Defendant's actions, including but not limited to, invasion of privacy, aggravation that accompanies collection telephone calls, emotional distress, increased risk of personal injury resulting from the distraction caused by the never-ending calls, increased usage of his telephone services, loss of cellular phone capacity, diminished cellular phone functionality, decreased battery life on his cellular phone, and diminished space for data storage on his cellular phone.

COUNT I – VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT

23. Claimant repeats and realleges paragraphs 1 through 22 as though fully set forth herein.

24. The TCPA, pursuant to 47 U.S.C. § 227(b)(1)(iii), prohibits calling persons on their cellular phone using an automatic telephone dialing system (“ATDS”) or pre-recorded messages without their consent. The TCPA, under 47 U.S.C. § 227(a)(1), defines an ATDS as “equipment which has the capacity...to store or produce telephone numbers to be called, using a random or sequential number generator; and to dial such numbers.”

25. Defendant used an ATDS in connection with its communications directed towards Plaintiff’s cellular phone. During answered calls from Defendant, Plaintiff experienced a noticeable pause lasting a handful of seconds in length, which is instructive that an ATDS was being utilized to generate the calls. Moreover, the nature and frequency of Defendant’s contacts points to the involvement of an ATDS.

26. Upon information and belief, the system employed by Defendant to place phone calls to Plaintiff’s cellular phone has the capacity to store or produce telephone numbers to be called, using a random or sequential number generator; and to dial such numbers.

27. Defendant violated the TCPA by placing no less than 30 phone calls to Plaintiff’s cellular phone using an ATDS without his consent. Any consent Plaintiff may have given to Defendant by virtue of incurring the subject debt was explicitly revoked by Plaintiff’s demands that it cease contacting him.

28. The calls placed by Defendant to Plaintiff were regarding business transactions and not for emergency purposes as defined by the TCPA under 47 U.S.C. § 227(b)(1)(A)(i).

29. Under the TCPA, pursuant to 47 U.S.C. § 227(b)(3)(B), Defendant is liable to Plaintiff for at least \$500.00 per call. Moreover, Defendant’s willful and knowing violations of the TCPA

should trigger this Honorable Court's ability to triple the damages to which Plaintiff is otherwise entitled to under 47 U.S.C. § 227(b)(3)(C).

WHEREFORE, Plaintiff, LEONARD M. WETZEL, respectfully requests that this Honorable Court enter judgment in his favor as follows:

- a. Declaring that the practices complained of herein are unlawful and violate the aforementioned statutes and regulations;
- b. Awarding Plaintiff damages of at least \$500.00 per phone call and treble damages pursuant to 47 U.S.C. §§ 227(b)(3)(B)&(C);
- c. Awarding Plaintiff costs and reasonable attorney fees;
- d. Enjoining Defendant from further contacting Plaintiff; and
- e. Awarding any other relief as this Honorable Court deems just and appropriate.

COUNT II – VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT

30. Plaintiff repeats and realleges paragraphs 1 through 29 as though full set forth herein.

31. Plaintiff is a "consumer" as defined by 15 U.S.C. §1692a(3) of the FDCPA.

32. Defendant is a "debt collector" as defined by §1692a(6) of the FDCPA, because it regularly use the mail and/or the telephone to collect, or attempt to collect, delinquent consumer accounts.

33. Defendant identifies itself as a debt collector, and is engaged in the business of collecting or attempting to collect, directly or indirectly, defaulted debts owed or due or asserted to be owed or due to others. Defendant has been a member of the Association of Credit and Collection Professionals, and association of debt collectors since 1973.¹

¹ <https://www.acainternational.org/search#memberdirectory>

34. The subject debt is a “debt” as defined by FDCPA §1692a(5) as it arises out of a transaction due or asserted to be owed or due to another for personal, family, or household purposes.

a. Violations of FDCPA §1692c(a)(1) and §1692d

35. The FDCPA, pursuant to 15 U.S.C. §1692d, prohibits a debt collector from engaging “in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt.” §1692d(5) further prohibits, “causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number.”

36. Defendant violated §1692c(a)(1), d, and d(5) when it repeatedly called Plaintiff after being notified to stop. Defendant called Plaintiff no less than 30 times after he demanded that it stop calling. This repeated behavior of systematically calling Plaintiff’s cellular phone in spite of Plaintiff’s demands was harassing and abusive. The frequency and nature of calls shows that Defendant willfully ignored Plaintiff’s pleas with the goal of annoying and harassing him.

37. Defendant was notified by Plaintiff that its calls were not welcomed and inconvenient due to his sleep schedule. As such, Defendant knew that its conduct was inconvenient and harassing to Plaintiff.

b. Violations of FDCPA § 1692e

38. The FDCPA, pursuant to 15 U.S.C. §1692e, prohibits a debt collector from using “any false, deceptive, or misleading representation or means in connection with the collection of any debt.”

39. In addition, this section enumerates specific violations, such as:

“The use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer.” 15 U.S.C. §1692e(10).

40. Defendant violated §1692e and e(10) when it used deceptive means to collect and/or attempt to collect the subject debt. In spite of the fact that Plaintiff demanded that it stop contacting him, Defendant continued to contact Plaintiff via automated calls. Instead of putting an end to this harassing behavior, Defendant systematically placed calls to Plaintiff's cellular phone in a deceptive attempt to force him to answer its calls and ultimately make a payment. Through its conduct, Defendant misleadingly represented to Plaintiff that it had the legal ability to contact him via an automated system when it no longer had consent to do so.

c. Violations of FDCPA § 1692f

41. The FDCPA, pursuant to 15 U.S.C. §1692f, prohibits a debt collector from using "unfair or unconscionable means to collect or attempt to collect any debt."

42. Defendant violated §1692f when it unfairly and unconscionably attempted to collect on the subject debt by continuously calling Plaintiff no less than 30 times after being notified to stop. Attempting to coerce Plaintiff into payment by placing voluminous phone calls without his permission is unfair and unconscionable behavior. These means employed by Defendant only served to worry and confuse Plaintiff.

43. As pled in paragraphs 20 through 22, Plaintiff has been harmed and suffered damages as a result of Defendant's illegal actions.

WHEREFORE, Plaintiff, LEONARD M. WETZEL, respectfully requests that this Honorable Court enter judgment in his favor as follows:

- a. Declaring that the practices complained of herein are unlawful and violate the aforementioned bodies of law;
- b. Awarding Plaintiff statutory damages of \$1,000.00 as provided under 15 U.S.C. §1692k(a)(2)(A);
- c. Awarding Plaintiff actual damages, in an amount to be determined at trial, as provided under 15 U.S.C. §1692k(a)(1);

- d. Awarding Plaintiff costs and reasonable attorney fees as provided under 15 U.S.C. §1692k(a)(3);
- e. Enjoining Defendant from further contacting Plaintiff seeking payment of the subject debt; and
- f. Awarding any other relief as this Honorable Court deems just and appropriate.

Dated: April 21, 2020

s/ Nathan C. Volheim (Lead Attorney)
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Respectfully submitted,

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